

1953

NEW HAMPSHIRE LAW LIBRARY

March 30

SEP 03 1998

CONCORD, N.H.

Malcolm H. Thompson, Esq.,
City Solicitor,
Franklin, New Hampshire

In Re: Rights of municipally-owned water department
against new owner of property subject to lien
of water bill

Dear Mr. Thompson:

Your letter of March 25, 1953, addressed to the Public Utilities Commission, has been referred to me, as counsel for the Commission, for reply.

Under section 22, chapter 56, Revised Laws, the Water Department of the City of Franklin has a lien against the property to secure payment of water bills incurred by the former owner. The Water Commissioner has the alternative of executing and foreclosing its statutory lien. However, your specific inquiry is whether or not the Water Commissioner may properly shut off the water of the present owner of this property in order to compel payment of a water bill incurred by the former owner. If your published tariff contains a general provision relative to curtailing services after due notice to any customer who fails to pay his water bill, as is generally customary with utilities which are under the regulatory jurisdiction of the Public Utilities Commission, then it would seem that you would be on a firm legal basis in shutting off the water.

You recognize that under chapter 56, section 1, Revised Laws, municipal water works are subject to the jurisdiction of the New Hampshire Public Utilities Commission only as to sections 7 through 18 inclusive of chapter 209 of the Revised Laws as amended by chapter 203, Laws of 1951. These provisions relate to accounting and reporting duties of municipally-owned water works but do not extend the jurisdiction of the Public Utilities Commission to the performance of services by municipal water works to its customers within the city operational area. The question you have asked is therefore one of purely local concern.

While the opinion of this office is not binding in matters of purely local interest -- such as this problem -- nevertheless in

March 30, 1953

an effort to be of assistance in resolving this question I would advise that it is my private opinion that the remedy of foreclosing a lien granted by section 22, chapter 56, Revised Laws, is not an exclusive remedy and that the municipally-owned utility may use the doctrine of self-help by shutting off the water supply of a non-paying customer in order to compel payment of a properly incurred bill. The mere fact that the present owner did not incur the bill would not excuse him from payment. I venture no opinion as to a court's view of the exclusiveness of the remedy provided in section 22, chapter 56, Revised Laws; nor do I express any opinion as to or endorsement of the policy of shutting off water when a bill is incurred by a former owner of property when there is already existent a statutory remedy.

I trust that this opinion may be of some aid to you in the resolution of a most difficult problem.

Very truly yours,

John H. Massikas
Deputy Attorney General

JHM:EP

CC: Public Utilities Commission